HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Review Petition no. 34 of 2004
In
W.P. No. 102 (S/B) of 2003.
Rajvanshi Prasad S/o Shri Mangal Ram

Vs.

State of Uttaranchal and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 11.08.2005.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

REVIEW PETITION NO. 34 OF 2004

IN

WRIT PETITION NO. 102 (S/B) OF 2003

Rajvanshi Prasad,
S/o Shiv Mangal Ram,
R/o Village Sisaiya (Melaghat)
P.O. Khali Mahuvat, Tehsil Khatima,
District Udham Singh Nagar. .....Petitioner.

Versus

1. State of Uttaranchal through secretary Cooperative Societies, Government of Uttaranchal, Dehradun.
2. Registrar Cooperative Societies, Uttaranchal, Dehradun.
3. District Assistant Registrar Cooperative Societies, Udham Singh Nagar.
4. District Collector, Udham Singh Nagar. .....Respondents.

11.08.2005

Hon'ble Rajesh Tandon, J.

Heard Sri K.S. Bora, learned counsel for the petitioner and Sri U.K. Uniyal, Sr. Advocate assisted by Sri Shobhit Saharia, learned counsel for the respondents/ review applications.

By the present review petition, the review applicant has prayed for reviewing/recalling the order dated 15th June, 2004 passed in Writ Petition No. 102 (SB) of 2003 Rajvanshi Prasad Vs. State of Uttaranchal and others.

The review application was filed on 28.07.2005. Sri K.S. Bohra has opposed review petition on the ground of delay as well as on the ground of merit.

So far as the ground of delay is concerned, I have perused the record and in my opinion let the delay be condoned and therefore, I have heard the parties on merits of the review petition.

Briefly stated, the petitioner was appointed as a Kurk Amin by the respondent no. 4 on 8th August, 1973 for realization of outstanding dues of the various Cooperative Societies as arrears of land revenue. He was appointed on commission basis. He was given 6% of collection/recovery from the month of August to March and 4% from the month of April to July.

The grievance of the petitioner was in the writ petition that he should have been treated as government servant keeping in view the judgment of the Apex Court in State of U.P. Vs. Chandra Prakash Pandey & others reported in JT 2001(4) SC 145 and he should have been retired at the age of 60 years.

Learned counsel for the petitioner has relied upon the Government Order dated 15th June, 2002, where it has been mentioned that the age of retirement is 60 year4s instead of 58.

Reference was also made on the judgment in the case of Jagpal Vs. State of Uttaranchal and others of the Writ Petition No. 383 (S/S) of 2003, where the reliance has been placed on the notification dated 28th February, 2003 enhancing the age of superannuation of the employees working in the cooperative societies, from 58 to 60 years w.e.f. 31st January, 2003.

Further in Special Appeal No. 16 of 2004, the matter came up for interpretation of the G.O. dated 26/28th February, 2003 where it has been held that the G.O. dated 26/28th February, 2003 was applicable to all the cooperative societies and the retirement age will be 60 years. Reliance was placed on paragraph 3 of the G.O., which reads as under:-

''सम्बन्धित सेवा–नियमावलियों को तददुसार इस हद तक संषोधित समझ जाय।''

The Division Bench, therefore, has observed that the service regulations should be deemed to be amended as per government order and the order was in the nature of the policy

decision of the Government under Article 162 of the Constitution of India and it always has the effect of modifying the regulations, the appeal therefore, was dismissed on 9th February, 2005.

In another writ petition no. 950 of 2003, similar controversy has been decided directing to retire the petitioner on his completing the age of 60 years in view of the government order.

Applicant has raised a plea that in view of the government order dated 26/28th February, 2003, the petitioner is not entitled for any relief as he retired vide order 17.09.2002 w.e.f. 13.06.2002.

The argument has no force as in the judgment of the Apex Court in State of U.P. v. Chandra Prakash Pandey and others JT 2001 (4) 145, it has been observed that Kurk Anins are government servants. Relevant paragraph 9 is quoted below-:

"Undisputedly, the decision of the Allahabad High Court that the Kurk Amins, appointed on salary basis for realization of dues of cooperative societies held civil posts and became Government servants has attained finality as its correctness has not been challenged by the State of Uttar Pradesh by bringing the matter to this Court, rather the same got approval of this Court while remanding the matter to the High Court for considering the question whether cases of Kurk Amins appointed on commission basis stand on the same footing as that of Kurk Amins appointed on salary basis in whose cases it was declared that the held civil posts and would be entitled to the same salary as is payable to Kurk Amins of Revenue Department.

In view of the aforesaid judgment, the earlier government order dated 15th June, 2002 by which the age has been

enhanced to60 years are fully applicable which was enforced from 1st June, 2002.

Admittedly, the petitioner retired on 13th June, 2002 vide order dated 17.09.2002 and therefore, the petitioner is fully entitled for the benefit of the G.O. dated 15th June, 2002.

I, therefore, find no infirmity in the order passed on 15th June, 2004 granting benefit of the G.O. dated 15th June, 2002 in favour of the petitioner.

The review petition lacks merit and is, therefore, dismissed.

(Rajesh Tandon, J.)

11.08.2005

Rathour